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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALASKA-SUTHERLIN KNOLLS
CORPORATION,

Defendant.

CV'07-1084

Civil Case No. _____

AS

COMPLAINT

waived

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the United States Army Corps of Engineers, alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), to obtain injunctive relief and civil penalties against Alaska-Sutherlin Knolls Corporation ("Defendant"), for the discharge of pollutants into waters of the United States in Sutherlin, Douglas County, Oregon without authorization by the United States Department of the Army, Corps of Engineers ("Corps"), in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

2. Defendant violated the CWA Section 301(a) by violating the mitigation-related terms and conditions of a CWA Section 404 permit during development of a multiple retail commercial center within the city limits of Sutherlin, Oregon.

3. In this action, the United States seeks (1) to enjoin the discharge of pollutants into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendant, at their own expense and at the direction of the Corps, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendant to pay civil penalties as provided in 33 U.S.C. § 1319(d).

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to

CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

5. Venue is proper in the District of Oregon pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because the Defendant conducts business in this District, the subject property is located in this District, and the cause of action alleged herein arose in this District.

6. Notice of the commencement of this action has been provided to the State of Oregon pursuant to CWA section 309(b), 33 U.S.C. § 1319(b).

THE PARTIES

7. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

8. Defendant Alaska-Sutherlin Knowles Corporation is a limited liability corporation organized under the laws of Oregon with a business address of P.O. Box 860 Sutherlin, Oregon.

9. At all times relevant to the Complaint, the Defendant either owned, leased or otherwise controlled the real property that is the subject of this Complaint and/or otherwise controlled the activities that occurred on such property.

STATUTORY BACKGROUND

10. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, inter alia, a permit issued pursuant

to CWA section 404, 33 U.S.C. § 1344.

11. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

12. CWA section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

13. CWA section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, inter alia, dredged spoil, rock, sand and cellar dirt.

14. CWA section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

15. 33 C.F.R. § 328.3(a)(1), (2), (3), (5) and (7), and 40 C.F.R. § 232.2, define "waters of the United States" to include: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) all other waters, such as intrastate lakes, rivers, streams, sloughs or wetlands, the use, degradation or destruction of which could affect interstate or foreign commerce; (iv) tributaries to such waters; and (v) wetlands adjacent to such waters or their tributaries.

16. 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 232.2 define "wetlands" as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of

vegetation typically adapted for life in saturated soil conditions.

17. CWA section 502(14), 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

18. CWA section 502(5), 33 U.S.C. § 1362(5), defines "person" to include "an individual [or] corporation."

19. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

20. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

CLAIM FOR RELIEF

(Violation of CWA Permit)

21. On September 2, 1999 the Corps issued Defendant Permit No. 97-01571 (Permit) pursuant to CWA Section 404 (1) to fill 6.49 of 9.04 acres of emergent wet pasture on a 30 acre site located adjacent to an unnamed tributary (UT) to Cook Creek (UT), creek mile 1.8, that is located in Section 19, Township 25 South, Range 5 West in Sutherlin, Douglas County, Oregon (hereinafter referred to as "the Site"); (2) to relocate part of the UT, and direct overflow from a pond through a 670 foot length of culvert with outfall into the UT

in order to develop a multiple retail commercial center within the city limits of Sutherlin, Oregon.

22. An express condition of the Permit required Defendant to complete by July 28, 2002 the implementation of a wetland mitigation plan as proposed in the Corps-approved *Alaska/Sutherlin Knolls, Wetland Mitigation Support Document* that was attached to the Permit, in accordance with which Defendant was to: avoid 2.79 acres of on-site wetlands; provide an upland buffer between the riparian edge of the new alignment of the UT and the development; and perform a total of 12.78 acres of compensatory mitigation both on- and off-Site.

23. From the date of Permit issuance on September 2, 1999 until July 28, 2002, the Defendant and/or persons acting on its behalf, discharged dredged or fill material into waters of the United States without or improperly completing the wetland mitigation described in paragraph 21 in violation of the Permit.

24. The dredged or fill material that the Defendant and/or persons acting on their behalf, caused to be discharged includes, among other things, dirt, spoil, rock and sand, all of which constitute "pollutants" as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

25. The Defendant and/or persons acting on their behalf used mechanized land-clearing and earth-moving equipment to accomplish the discharges. This equipment constitutes "point sources" as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

26. The Defendant either owned, leased or otherwise controlled the land on which

each unauthorized discharge of dredged or fill material into waters of the United States occurred.

27. The Defendant conducted, contracted for, supervised and/or otherwise controlled the unauthorized activities at issue in Paragraph 23.

28. The Defendant is a person within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

A. That the Defendant be permanently enjoined for discharging or causing the discharge of dredged or fill material or other pollutants into any waters of the United States except in compliance with the CWA;

B. That the Defendant be enjoined to undertake measures, at Defendant's own expense and at the direction of the Corps of Engineers, to: correct conditions resulting from violations of the CWA permit; effect complete restoration of waters of the United States that have been affected by Defendant's violations of the CWA; and/or to conduct on-Site and off-Site mitigation for irreversible environmental damage;

C. That the Defendant be assessed pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of each violation of CWA section 301(a), 33 U.S.C. § 1311(a);

D. That the United States be awarded costs and disbursements in this action; and

E. That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.


DATED this 26th day of July, 2007.

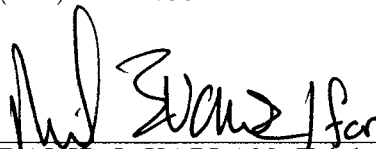
Respectfully submitted,

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